

HOUSE BILL 116

By Shepard

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 17, relative to smoking and to enact the
Children's Act for Clean Indoor Air of 2007.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, is amended by deleting part 16 in its entirety and by substituting instead the following language as a new part 16:

§ 39-17-1601.

This part shall be known, and may be cited as, the "Children's Act for Clean Indoor Air of 2007."

§ 39-17-1602.

It is the intention of the general assembly that this part reduce the extent to which children are exposed to environmental tobacco smoke.

§ 39-17-1603.

As used in this part, unless the context otherwise requires:

(1) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including, but not limited to:

(A) Taverns;

(B) Nightclubs;

(C) Cocktail lounges; and

(D) Cabarets;

(2) "Business" means any corporation, sole proprietorship, partnership, limited partnership, professional corporation, enterprise, franchise, association, trust, joint venture, or other entity, whether for profit or nonprofit;

(3) "Children" means individuals who have not attained eighteen (18) years of age;

(4) "Employee" means an individual who is employed by a business in consideration for direct or indirect monetary wages or profit;

(5) "Employer" means an individual or a business that employs one (1) or more individuals;

(6) "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, that extend from the floor to the ceiling;

(7)

(A) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including hospitals that provide inpatient or outpatient services, hospital-owned and operated ambulatory surgical treatment centers, hospital-owned and operated free-standing medical clinics, weight control clinics, homes for the chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions.

(B) "Health care facility" includes the building or buildings of the health care facility, together with all property owned or operated by a

health care facility that is contiguous to the building or buildings in which care, treatment or services are provided.

(C) "Health care facility" does not include mental health residential treatment facilities or long-term care facilities;

(8) "Infiltrate" means to permeate an enclosed area by passing through its walls, ceilings, floors, windows, or ventilation systems to the extent that an individual can smell secondhand smoke;

(9) "Long-term care facility" means a nursing home, residential care facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care;

(10)

(A) "Place of employment" means an enclosed area under the control of a public or private employer that employees utilize during the course of employment, including, but not limited to:

(i) Work areas;

(ii) Employee lounges;

(iii) Restrooms;

(iv) Conference rooms;

(v) Meeting rooms;

(vi) Classrooms;

(vii) Employee cafeterias; and

(viii) Hallways.

(B) A private residence is not a place of employment unless it is used as a licensed child care, adult day care, or health care facility;

(11)

(A) "Public place" means an enclosed area to which the public is invited or in which the public is permitted, including, but not limited to:

- (i) Banks;
- (ii) Bars;
- (iii) Educational facilities;
- (iv) Health care facilities;
- (v) Laundromats;
- (vi) Public transportation facilities;
- (vii) Reception areas;
- (viii) Restaurants;
- (ix) Retail food production and marketing establishments;
- (x) Retail service establishments;
- (xi) Retail stores;
- (xii) Shopping malls;
- (xiii) Sports arenas;
- (xiv) Theaters; and
- (xv) Waiting rooms.

(B) A private residence is not a public place unless it is used as a licensed child care, adult day care, or health care facility;

(12)

(A) "Restaurant" means:

(i) An eating establishment that gives or offers for sale food to the public, guests, or employees; and

(ii) A kitchen or a catering facility in which food is prepared on the premises for serving elsewhere.

(B) "Restaurant" includes, but is not limited to:

(i) Coffee shops;

(ii) Cafeterias;

(iii) Sandwich stands; and

(iv) Private and public school cafeterias.

(C) "Restaurant" does include a bar area within any restaurant;

(13) "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental;

(14) "Secondhand smoke" means smoke:

(A) Emitted from lighted, smoldering, or burning tobacco when the person smoking is not inhaling;

(B) Emitted at the mouthpiece during puff drawing; and

(C) Exhaled by the person smoking;

(15) "Service line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money;

(16) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments;

(17) "Smoking" means inhaling, exhaling, burning, or carrying any:

(A) Lighted tobacco product, including cigarettes, cigars, and pipe tobacco; and

(B) Other lighted combustible plant material; and

(18) "Sports arena" means a stadium, a sports pavilion, a gymnasium, a health spa, a boxing arena, a swimming pool, a roller rink, an ice rink, a bowling alley, and other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

§ 39-17-1604.

(a) Smoking is prohibited in all public places and enclosed areas within places of employment that permit the presence of children, including, but not limited to:

(1) Common work areas;

(2) Auditoriums;

(3) Classrooms;

(4) Conference and meeting rooms;

(5) Private offices;

(6) Elevators;

- (7) Hallways;
- (8) Health care facilities;
- (9) Cafeterias;
- (10) Employee lounges;
- (11) Stairs;
- (12) Restrooms; and
- (13) All other enclosed areas.

(b) An individual, a person, an entity, or a business subject to the smoking prohibitions of this section shall not discriminate or retaliate in any manner against a person for making a complaint of a violation of this section or furnishing information concerning a violation to a person, an entity, or a business or to an enforcement authority.

(c) The prohibitions on smoking in subsections (a) and (b) shall be communicated to all current employees by their employer within thirty (30) days of July 1, 2007, and to each prospective employee upon application for employment.

§ 39-17-1605.

An owner or operator of any of the following areas may exempt itself from this part:

(1) Private residences except when used as a licensed child care, adult daycare, or health care facility;

(2)

(A) Hotel and motel rooms that are rented to guests and are designated as smoking rooms.

(B) However, if a hotel or motel has more than twenty-five (25) guest rooms, not more than twenty percent (20%) of rooms rented to guests in the hotel or motel may be designated as exempt from this part;

(3) All workplaces of any employer with fewer than three (3) employees; provided, however, that this exemption does not apply to any public place;

(4) A retail tobacco store, if secondhand smoke from the store does not infiltrate into areas in which smoking is prohibited under this part;

(5) Areas within long-term care facilities that are designated by the long-term care facilities as a smoking area or for supervised patient smoking only;

(6) Outdoor areas of places of employment;

(7) All workplaces of any manufacturer, importer, or wholesaler of tobacco products, of any tobacco leaf dealer or processor, and all tobacco storage facilities;

(8) All restaurants and bars licensed by this state that prohibit at all times all persons less than eighteen (18) years of age from entering the premises if secondhand smoke does not infiltrate into areas in which smoking is prohibited under this part; provided that all restaurants and bars that are exempt under this subdivision (8) shall prominently display a health warning sign as defined by the department of health.

§ 39-17-1606.

(a)

(1) "No Smoking" signs or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across shall be clearly and conspicuously posted and

properly maintained by the owner, operator, manager, or other person in control in every public place and place of employment in which smoking is regulated by this part to ensure that the public is aware of the restriction.

(2) The following notice shall be prominently posted, including at each ticket booth, for sporting events:

“Smoking is prohibited by law in seating areas and in restrooms.”

(b) The owner, operator, manager, or other person in control of any area in which smoking is prohibited by this part shall remove all ashtrays from the area unless an ashtray is permanently affixed to an existing structure before July 1, 2007.

(c) The department of health may treat a violation of this section as a deficiency to be assessed against any licensee or facility over which it has statutory jurisdiction.

§ 39-17-1607.

(a) The department of health may adopt reasonable rules and regulations in accordance with the uniform administrative procedures act, title 4, chapter 5, that it determines are necessary or useful to carry out the purposes or facilitate enforcement of this part.

(b)

(1) The department of health and its authorized agents may enforce compliance with this part and any rules adopted and promulgated under this part.

(2) Under rules promulgated pursuant to this part, the department and its authorized agents may enter upon and inspect the premises of any public place or enclosed area within a place of employment at any reasonable time and in a reasonable manner.

§ 39-17-1608.

(a) This part is cumulative to and does not prohibit the enactment of any other laws or rules prohibiting smoking that are more restrictive than this part.

(b) This part may not be construed to permit smoking where it is otherwise restricted by other applicable laws or employer policies.

§ 39-17-1610.

(a) A person violating any provision of this part or failing to take reasonable measures to enforce this part commits a Class B misdemeanor, punishable only by a fine not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).

(b) Any law enforcement officer may issue a citation regarding a violation of this part.

SECTION 2. This act shall take effect July 1, 2007, the public welfare requiring it.